

IDAHO ENDOWMENT LANDS AND THE IDAHO CONSTITUTION

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THE ENDOWMENT AND THE CONSTITUTION

The Idaho Constitutional Convention convened in Boise on July 4, 1889. The delegates at the convention were expecting Congress to grant endowment lands upon admission, and included a plan for the management of those lands in six sections of Article IX, the Education and School Lands Article. Sections 7 and 8 created the Board of Land Commissioners and charged them with the duty of managing the endowment lands. Sections 3, 4 and 11 created the public school fund, made it inviolate and restricted the investments that could be made by the fund. Section 10 governed the management of the University endowment lands.

Following are sections 7 and 8, showing both the original 1890 language and the sections as they read today.

§ 7. The governor, superintendent of public instruction, secretary of state, and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

§ 8. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the school lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor **long term financial return to the institution to which granted or to the state if not specifically granted.** Provided, that no school state lands shall be sold for less than ~~ten (\$10) dollars per acre~~ **the appraised price.** Provided, that no law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of such grants; provided that not to exceed ~~twenty-five (25)~~ **one hundred** sections will be sold in any one (1) year, and to be sold in subdivisions of not to exceed ~~one hundred and sixty (160)~~ **three hundred and twenty** acres to any one individual, company or corporation.

THE CONFLICTING VIEWS

Idaho's Founders had three conflicting views about the best management of the endowment to be received. The Education and School Lands Committee

recommended that the management be left almost entirely to the Legislature, that the lands should be sold as quickly as possible. The proceeds from these sales would be put into the public school fund which in turn would be invested in first mortgages on improved agricultural land. The interest on these loans would be used to support public education. William J. McConnell (R-Latah), the Committee Chair, and John S. Gray (R-Ada) were the strongest proponents.

JAMES M. SHOUP (R-Custer): And as regards this question of saving this school land for future generations, that is all nonsense. We now propose to sell these lands right now, or as soon as we can, at the most convenient time. But there is no question but what this land is more valuable now than it will be hereafter after it has been cultivated and completely worn out by renters. We will then reserve for the future and for the people that live after us the cash this land brings, and give that to them as a perpetual fund which they shall keep forever, instead of giving them a lot of worthless and wornout land that is of no value to anyone, and in a part of the territory where irrigation is necessary and all the water rights taken up and owned by someone else.

CHARLES M. HAYS (R-Owyhee): I do not believe that the majority of this convention think that these lands should be held for twenty years. I believe they should be sold as rapidly as possible, in order that it may be some inducement to outsiders to purchase these lands and bring water upon them. If you do not, if you hold them for twenty years, you will have them forever.

The Committee's proposal was strongly opposed by William H. Claggett (R-Shoshone), the President of the Convention, Aaron F. Parker (D-Idaho), and others. These delegates thought that the land should never be sold and that the lease proceeds should go into an education fund, the interest from this fund to be used to support education.

AARON F. PARKER (D-Idaho): Let us hold on to them, let us freeze to them, to every acre of it, and not sell them now at a minimum price to land grabbers and speculators, and deprive our children of their common heritage. Let us hold on to them, and as our territory develops these lands will increase in value and we shall be able to get money for school purposes without calling upon the people for direct taxation for money for educational purposes, as they have to in our neighboring common wealth of Oregon today.

There was a third view at the Convention. That view was the middle; sell some of the lands and keep others. Limit the power of the legislature by requiring a minimum price per acre and limiting the amount of land that could be sold.

ORLANDO B. BATTEN (D-Alturas): Now the discussion has taken this turn, and we must adopt one or the other of two courses; either preserve our lands intact for all time, and so that we may derive a never-failing source of revenue from them, keep them as old landed estates are preserved in England, or sell them at once or very

soon, to realize some immediate revenue. Now it strikes me there is a middle ground between the two course, that we can test the merits of both by some provisions.

TO PROTECT FROM POLITICIANS AND SPECULATORS

Those opposing the sale of the endowment lands were convinced from their experience that if politicians were given the power to sell the lands, the endowment would be pillaged.

AARON F. PARKER (D-Idaho): I have lived in Oregon, and I have seen the state school lands of that commonwealth sold and frittered away for a dollar and a quarter an acre to speculators, and the state of Oregon has no school fund today to amount to anything in the treasury; but our school system is a foremost necessity in this whole undeveloped territory of Idaho.

LYCURGUS VINEYARD (D-Alturas): If we adopt now a system that will provide for the frittering away of these school lands to Tom, Dick and Harry, to syndicates and corporations, simply going for the pittance of a dollar and a quarter an acre, in twenty years there will be no school lands in this state. The school fund of Oregon Deteriorated. It happened by the bad management of the board of school land commissioners in that state in marketing those lands, a great many of them, for a small sum; they went to work and marketed these lands away until that fund really amounted to nothing – it didn't amount to anything. The charge that the mismanagement of those school lands is chargeable to a democratic administration in the state - I am not inclined to hold with my friend McConnell on that subject. I don't think it was because the governor was a candidate for the United States senate that the school lands of Oregon melted away and the money was frittered away. It was long before L.F. Grover was governor of the state. In some way it afterward melted away under the management of Sam May and his coadjutors. That is all there is about that - bad management of both parties of frittering away the entire school lands of that state. I am in favor of leasing these lands.

I think if these lands are thrown open to indiscriminate sale, that there are any amount of land grabbers to be found, any amount of syndicates can be organized to gobble them up at ten dollars an acre, and in twenty years the school fund of this state would be impoverished by it.

PETER J. PEFLEY (D-Ada): I was heartily in favor of selling the lands when I heard the explanation of the chairman of the committee that the money was stolen to send a man to the United States senate, but if we have such offenses in prospect now, and a good many politicians in the country, I think we had better keep the lands and not sell them, for fear they will be used for the same purpose.

ALEXANDER E. MAYHEW (D-Shoshone): Now if there are going to be any politicians, let them be republicans or democrats, that are going to steal this money, let us put this property in these lands in a condition that neither democrat nor republican can take it. It is no argument to me that because a democrat has done that once that there are not a great many republicans that will do it in the future if they have an opportunity – I think that is no argument at all; but the question before the convention now is how and in what manner we are going to best perpetuate the funds of the schools of this territory.

TRUST THE LEGISLATURE

Many other delegates had a more optimistic view of Idaho's future politicians. They were willing to trust the board of land commissioners and legislature they were creating.

WILLIAM J. McCONNELL (R-Latah): Allow the legislature discretion to sell these lands. The gentlemen who come here year after year are not all dishonest. They are as much interested as we are in the preservation of these lands and this fund. Many of them are husbands and fathers, and those who are not doubtless soon expect to be, and they will take as much pains with this fund's preservation – just as much as we.

JOHN S. GRAY (R-Ada): But it seems that the basis of all this argument is that the legislature will be composed of men of no sense at all. They will not have the interests of the territory at all at heart; they will not come here for that purpose, only for the purpose of stealing something, or getting rid of something, or disposing of the public property to some land-grabbing syndicate -- which I do not believe.

While the Article IX Committee thought it wise to vest the Board and Legislature with the power to sell the endowment lands, the Committee also thought it wise to protect those lands and the proceeds from those lands from political influences. The land was to be held "in trust." The land was to be managed "in such manner as will secure the maximum possible amount therefore" and was to be "disposed of at public auction." § 8. The Legislature was made the guarantor of the public school fund: "The state shall apply all losses thereof that may in any manner occur." § 3. The Committee planned to support education with the profits from these lands to relieve taxpayers from the burden.

THE PROFIT FROM LEASING

All of the delegates at the Convention accepted the proposition that the endowment lands should be managed "in such manner as will secure the maximum possible amount therefor." However, the delegates sharply disagreed as to how this would be best accomplished. Some thought leasing was the more profitable.

WILLIAM H. CLAGGETT (R-Shoshone): Assuming these school lands or any portion of them are sold, then what is going to be done with the money. In order to secure the fund from future loss, you will necessarily have to invest it in some form of security which is regarded as perfectly safe, and any form of security which is regarded as perfectly safe, sound security, necessarily bears a low rate of interest. Now let me ask a question right here, and that is, whether any of these lands can be sold at any price within the next ten or twenty years which will bring as large a rental, or rather as large an interest upon a perfectly secure investment, as you can get from these same lands by renting them out from year to year, and then have your whole principal intact at the end.

This spring I was down in eastern Washington. I found that nearly half the land that was settled upon there was settled upon by renters, and I found that the customary trade made there – by inquiry among the farmers, was that they gave half the gross crop, they gave that as an annual rental to the proprietor.

When these large irrigating canals are constructed, then they will be serviceable, not only to the lands of private proprietors but to other lands of the state as well, and therefore if you simply leave them in that condition where they are until these canals are constructed, then you give them an immense value.

THE LAND CAN'T BE LEASED

Many delegates took the floor to take issue with Claggett. It was their contention that the endowment lands could not be leased at all. King argued that the timber land could not be leased because it was subject to timber theft.

G.W. KING (D-Shoshone): In Kootenai county originally it was mostly timbered. If we adopt the system of leasing it will be impracticable there, for these reasons, that the timber land would naturally be cut off and destroyed more or less, and it would be impossible to keep any track of the wood destroyed. They go on and cut the timber off. I have been there four times within the last year, and the railroad company cuts a couple of hundred thousand ties every year; wherever it is most suitable for that purpose, they go there and take it. And you have to stand there with the sheriff to fight them off.

Others thought the lands on the Palouse could not be rented because of wild oats and cockle burrs.

A.S. CHANEY (D-Latah): Having been a rancher myself in northern Idaho for several years, I think I should at least be taken as some authority as to the rental and leasing of lands. Good farmers in our portion of the country have quit renting or leasing their lands entirely. They prefer to let them lie idle, by reason of the fact that if they rent them or lease them, in three or four years they become so foul with wild oats or cockle seed that they are no account any more.

Claggett's strongest opposition came from those who argued that the sagebrush lands of southern Idaho could not be leased.

JAMES M. SHOUP (R-Custer): Who is going to reclaim all these lands? I suppose that nine-tenths of the school land of this territory will now be arid land, land that cannot be cultivated without irrigations, and a great deal of it lies long distances from these large canals the gentleman from Shoshone speaks about.

WILLIAM J. McCONNELL (R-Latah): In the year 1883 there were surveyed in this territory 1378 sections of school land. Perhaps 75 sections would be all that would now be available for cultivation without irrigation, which would leave 1303 sections of land left out in the wilderness. What will any gentleman pretend to say these 1303 sections of land would rent for, as they are now situated, without any water on them today? Now by placing it in the power of the legislature to provide for the sale of these lands, parties will come in and buy the lands, bring on irrigating ditches, improve them and build up homes.

ROBERT ANDERSON (D-Bingham): I have been estimating a little, and I find that on a section of land, at the ordinary cost – and if these figures are overdrawn I hope any practical farmer in this convention will correct me – I find that on a section of land it takes about an average of \$2,500 to clear the sagebrush off; to put a fence around that land, say \$600; to plow it up, at something like \$2 an acre, \$1,300; if you pay the water rent, at a dollar an acre, \$600; to put on a house and stable and the necessary improvements would require some \$500, say, making a total of \$5,500. It strikes me that no prudent man is going to invest the four or five thousand dollars in permanent improvements necessary to be made on a piece of land he is not the owner of.

A BETTER BUSINESS PROPOSITION

McConnell argued that, as a business proposition, it made more sense to sell all the lands as soon as possible. The greatest income for the schools could be gotten by investing the proceeds of these sales in first mortgage loans on agricultural lands.

WILLIAM J. McCONNELL (R-Latah): Now we don't want to look upon this matter as a question of theory. We have a great many theoretical farmers. But if you gentlemen will take your pencils and a piece of paper I will give you the arithmetic of the problem. There are not more than 35 sections of land in northern Idaho and I doubt whether there are over 40 sections of land in southern Idaho, making 75 in toto. Mr. Claggett, have you your pencil. At an estimated value of \$15 an acre, which I guarantee it can be placed at today, it would amount to the sum total of \$720,000, if my figures are correct. Now it is unnecessary to say that this \$720,000 can be loaned on first-class farm security at 8 per cent. In fact, I know it can be loaned for 10 per cent, and so does any gentleman who is familiar with the process of loaning money in this territory. Now that would bring an annual income, at 8 percent of

\$57,000. Now you can take the rental, and you will have an income of \$12,000 from this land. You have \$45,600 per annum in favor of selling the land and loaning the money.

Claggett offered his own calculation.

WILLIAM H. CLAGGETT (R-Shoshone): I say that it is the most foolish policy that we could pursue, to destroy this magnificent fund, this endowment of the general government which is given to us here for the benefit of our children for not only now but for all time to come; and the gentleman can figure and figure until he can use up all the paper and pencils he can get in the town of Boise, and he can't change the practical result of the operation of this measure.

GENERATIONS OF POSTERITY NOT YET BORN

Aaron Parker was convinced that land was the basis of all wealth and greatness, and wanted to keep it for the "generations of posterity not yet born."

AARON F. PARKER (D-Idaho): The university of the state of California today derives all its princely revenue from the land grants bequeathed to it in the early time, and which they had the sense and sagacity to hold on to. Senator Stanford, also of California, bequeathed that magnificent land grant of Palo Alto to the state for special purposes, in trust forever. So in the great universities of the east, Girard College, Harvard and Yale Universities, derive their revenue from their landed possessions. So in the old country Oxford and Cambridge. So in the great charities, Bellevue Hospital in New York, and St. Bartholomew and Christ Church Hospitals in the city of London.

WHAT ABOUT THE POOR PIONEERS

Grey and others was more concerned about the poor pioneers than about the generations of posterity.

J.W. POE (D-Nez Perce): But while we are considering the benefit of future generations we should for a moment consider that there is a present generation that requires aid from this school land, that is, the men who have come into this country and reclaimed it from the wilderness, that are living here, as it were, in poverty, on account of having left their homes in the east and come here for the purpose of building up a new country.

IDAHO'S FUTURE

The Convention delegates based their endowment land policy, in part, on what they saw in the future for Idaho. McConnell foresaw declining land values.

WILLIAM J. McCONNELL (R-Latah): But this theory that land will be worth in fifty years, or twenty years, from now, \$100 an acre, or \$400 an acre is all conjecture. There are certain instances where land has enhanced very materially in value; take for instance such as real estate in the vicinity of prosperous cities; but take the lands all over the United States, and it is a notorious fact today, a well known fact to political economists who have made a study of this proposition, that lands are not so valuable by ten or fifteen per cent today as they were 25 years ago.

Claggett and Parker, on the other hand, foresaw the closing of the American frontier and nothing but development and prosperity.

WILLIAM H. CLAGGETT (R-Shoshone): I utterly deny the proposition of my friend from Latah that lands in the United States are depreciating in value. The very moment that it came to be understood generally throughout the country that the land was practically exhausted, from that moment, six or seven years ago, there has been a constant increase, going up year by year, almost in geometrical ration, in the value of lands all over the country, and everybody who is familiar with the facts of the case knows it to be true.

AARON F. PARKER (D-Idaho): I see coming over the Oregon Short Line and Northern Pacific hundreds and hundreds of emigrants almost every day in the year; not a day passed but there are at least five cars of emigrants coming from the eastern states. I believe, Mr. President, as Senator Hearst said on the floor of the United States senate chamber, that there will be a population of two million souls in the great Snake River valley, and while you and I may not live to see it, we must bear in mind that we are laying the foundations of a state, not for ourselves, but for our children and our children's children, and for generation yet unborn. I say that neither I nor you have any definite idea of what this land is worth today which lies under the sun of Idaho or what it is going to be worth in the future. And, Mr. Chairman, when it is advocated here to sell these lands for the little sum of five or ten or fifteen dollars an acre, I say that we are looking at the value of these lands through the big end of the telescope.

THE BOTTOM LINE

At the end of the day, the middle of the road view prevailed at the Convention. At the end of the debates concerning the endowment lands, the Convention adopted the following principles:

The majority of the delegates were willing to trust the Board of Land Commissioners and the Legislature with the power to decide the future of the endowment lands, but thought it wise to impose limitations on those powers. The lands were to be held in trust for the beneficiaries of the endowment. The land was to be managed according to private trust law and free from political influence and considerations. The land was to be disposed of, sold or rented, at public auction. The lands should be managed to secure the maximum possible amount therefor. No lands were to be

sold for less than \$10 per acre. No pre-emption right of settlers should be recognized. No more than 25 sections were to be sold in any one year. The land was to be sold in subdivisions not to exceed 160 acres to any one individual, company or corporation.

The majority of the delegates thought that the immediate sale of the school lands would provide the most revenue for public education in Idaho, while a minority thought that leasing would provide the most long-term revenue. Both sought the greatest return from the endowment in order to reduce the burden on the taxpayer. In the end, the Convention did not decide on a policy of selling, or renting. Instead, the Convention left that decision for the generations to follow by empowering the Board of Land Commissioners and Legislature to sell or rent the public lands.

THE FOUNDERS AND THE “DISPOSAL AT PUBLIC AUCTION” ISSUE

Article IX, § 8 of the Idaho Constitution states in part:

The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, *subject to disposal at public auction* for the use and benefit of the respective objects for which said grants of land were made . . . (emphasis added).

The question is: Did Idaho’s Founders intend to include the leasing of the lands held in trust in the phrase *disposal at public auction*?

It is clear from the language of Article IX and from *The Proceedings and Debates* that the delegates were using “disposal” broadly to include leases as well as sales. Section 8 refers to “disposal” at public auction; the language does not say “sale” at public auction.

The Article IX Committee Report repeatedly used the “disposal” language. The Board of Land Commissioners was to have the “direction, control and *disposition* of the public lands.” § 7. The Board of Land Commissioners was charged with the duty of providing for the “location, protection, sale or *disposition*” of the public lands. § 8.

The delegates at the Convention discussed the meaning of “disposal” being used by the Committee. J.W. Reid (D-Nez Perce) moved to amend the Committee Report by adding: “Provided, that no school lands shall be sold except at public auction for less than ten dollars per acre.” A. J. Pinkham (R-Alturas), a member of the Article IX Committee pointed out that the section already provided that “no land shall be sold except at public auction.” Delegate Reid then posed the question: Does disposal include leases?

All I want to provide is that all lands shall be sold at public auction; and I will inquire of the chairman of the committee, in the second line there, what do you mean by “the sale or other disposition?” Do you mean leasing, or some other way, mortgaging it to secure money on it? I suppose that term would mean that they could be leased, mortgaged and money borrowed on them for the use of the school fund.

Before Pinkam could answer, the Chair (Weldon Heyburn) cut off the discussion. *Proceedings and Debates*, p. 708.

The same question arose later the same day: Did the Committee mean to limit “disposal at public auction” to “sale at public auction?” William H. Claggett was

complaining about the Committee Report, saying that it required a “sale at public auction,” and therefore prevented sales on installment plans, which would help the poor man and foreclose the speculators:

The Convention has provided right in here that no poor man shall ever buy any of these lands, that they shall be turned over to the speculators and syndicates. If you want to obtain a price for your land, sell it to the poor man on the installment plan and let him pay for it in twenty years’ time, and allow the purchase money to bear interest.

McConnell, the spokesman for the Committee, immediately assured Claggett that “disposal” was being used in a broad way and would include installment contracts.

It can be sold on the installment plan.

Proceedings and Debates, p. 755.

J.W. Reid quickly took the floor to state that Pinkham had given him the same answer given by McConnell. “Disposition at public auction” included installment contracts, leases and other disposals.

By the amendment adopted this morning – which seems to have been adopted, there is full power given to this board to sell, how? At public auction. The sale has got to be in that way, which is the only limitation. The preceding section and this section itself give to the board the right to sell and dispose – “or other disposition.” I asked the gentleman this morning for an explanation. He was about to give it, and the chairman of the committee, Mr. Pinkham, explained it, that they could sell, if they saw fit, in that way. Now this gives power to sell and dispose of these lands by sale, lease or any other way.

Proceedings and Debates, pp. 755-756.

Shortly thereafter, John S. Gray moved to amend by striking “other disposition” in the first sentence of the section and substituting “rental.” Gray was worried that “other disposition” being used broadly would include the power to mortgage, which he did not want. He said:

The phrase “or other disposition” is a little too uncertain. . . . I object to those words “or other disposition”. I don’t wish the legislature to have the power to mortgage them.

The amendment was quickly put to vote and passed. *Proceedings and Debates*, p. 762.